

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE  
TRUJILLO, individually and on  
behalf of all other similarly  
situated,

Plaintiffs,

vs.

Case No.

GOOGLE LLC,

5:20-cv-03664-LHK-SVK

Defendant.

\_\_\_\_\_/

VIDEOTAPED DEPOSITION OF CHRISTOPHER CASTILLO

Remote Zoom Proceedings

Sacramento, California

Tuesday, February 8, 2022

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

JOB No. 5077508

Pages 1 - 266

Page 1

1 while you browse the internet?

2 MR. MCGEE: Object to the form.

3 You can answer.

4 THE WITNESS: Yeah, I do. Some. I mean, not --

5 nothing outrageous. I mean, I will use Incognito mode on 09:22:21  
6 occasion.

7 Q. BY MR. BROOME: Aside from using Incognito mode  
8 on occasion, what other precautions do you take to  
9 protect your privacy while you browse the internet?

10 A. Sometimes I remove cookies, but other than that, 09:22:42  
11 not really much else.

12 Q. When you remove cookies, do you do that during a  
13 private browsing session or do you do that during regular  
14 browsing sessions?

15 A. I usually do it during regular browsing sessions 09:22:55  
16 because on occasion they interfere with performance on my  
17 computer.

18 Q. In what way?

19 A. They slow it down.

20 Q. And what -- what's the basis for your belief 09:23:15  
21 that cookies slow down your computer?

22 A. Articles I read on the -- on the computer.

23 Q. And did you do research into this issue about  
24 cookies?

25 A. No, I wouldn't classify it as research. I would 09:23:29

1 just classify it as casual reading on the internet.

2 Q. Okay. All right.

3 Aside from -- well, how often do you delete  
4 cookies?

5 A. I don't recall. Maybe once or twice a year. 09:23:51

6 Q. Have you ever enabled cookie blockers?

7 A. I don't recall. I don't think so. Possibly,  
8 but I don't recall doing it. I use Norton Internet  
9 Security, and I think it -- it -- I think it -- I may  
10 have set the setting to block cookies on occasion, but 09:24:18  
11 then I end up turning it back on because I need some of  
12 the services that some of the websites have that, you  
13 know, if I want to purchase something, I have to accept  
14 their cookies.

15 Q. Are you familiar with the cookie-blocker feature 09:24:31  
16 in Chrome?

17 A. I know about it, but I haven't really researched  
18 it or -- or played with it. I mean, I don't think  
19 I've -- I think possibly in the past, I've engaged it and  
20 turned it on and off. 09:24:48

21 Q. And you mentioned -- I think you mentioned  
22 Norton Internet Security. What's that?

23 A. It is a -- it's a third-party service that keeps  
24 your computer safe.

25 Q. Safe from what? 09:25:04

1 page 4?

2 Q. Yes.

3 A. Okay. I'm there.

4 Q. Do you see "Our Warranties and Disclaimers"?

5 A. Okay. I've reviewed it. 09:58:54

6 Q. It says: "We provide our services using a  
7 commercially reasonable level of skill and care and we  
8 hope that you will enjoy using them. But there are  
9 certain things that we don't promise about our services."

10 Do you see that? 09:59:09

11 A. Sure.

12 Q. Okay.

13 A. Yes, I see it.

14 Q. And then in all caps it says: Other than as  
15 expressly set out in these terms or additional terms, 09:59:16  
16 neither Google nor its suppliers or distributors make any  
17 specific promises about the services. For example, we  
18 don't make any commitments about the content within the  
19 services, the specific function of the services, or their  
20 reliability, availability, or ability to meet your needs. 09:59:31  
21 We provide the services 'as is.'"

22 Do you see that?

23 A. Yes, I see it on the page in front of me.

24 Q. Is the Chrome browser, in your understanding, a

25 Google service? 09:59:43

1 MR. MCGEE: Object to the form, calls for a  
2 legal conclusion.

3 You can answer.

4 THE WITNESS: As far as I know, Chrome is a  
5 service provided by Google. 09:59:52

6 Q. BY MR. BROOME: And what about Incognito mode;  
7 is that a service provided by Google?

8 MR. MCGEE: Object to the form, calls for a  
9 legal conclusion.

10 You can answer. 10:00:00

11 THE WITNESS: I believe it is a -- part of a  
12 Chrome browser, and it's -- it was built and it's  
13 presented to offer me an ability to indicate clearly to  
14 Google my non-consent for surreptitious interception of  
15 my communications. 10:00:20

16 Q. BY MR. BROOME: Okay. Is it a service provided  
17 by Google?

18 MR. MCGEE: Same objection.

19 THE WITNESS: Is it a service provided by  
20 Google. It's a service provided by Chrome. So 10:00:30  
21 therefore, it is a service provided by Google.

22 Q. BY MR. BROOME: Okay. And then -- and you  
23 agreed to this provision; correct? When you signed up to  
24 your Google Account?

25 A. What provision are you referring to? 10:00:42

1 settings.

2 A. Yeah, I can see that. Yeah. Yeah, I'm familiar  
3 with that. Like, for instance, maybe you want everything  
4 to be private, but Maps you don't want to be private  
5 because you want to know where you're going. Yeah, I can 12:26:53  
6 see that.

7 Q. And -- and those different privacy settings  
8 allow users to control what Google collects in different  
9 ways.

10 Do you understand that? 12:27:05

11 A. Yeah. I see that. But I see that when --  
12 that's when you're like normally using Google services,  
13 not when you're Incognito mode. That's just like the  
14 settings, the standard settings that when you're like  
15 using Google services, but when you're in Incognito mode, 12:27:20  
16 you're like specifically telling Google that you don't  
17 consent to their surreptitious interception of your  
18 communications.

19 I see that. We're not -- are we talking about  
20 when you're in Incognito mode, when you've told Google 12:27:38  
21 that you don't want them to intercept your communication,  
22 or are we talking about when you're like normally using  
23 Google without letting them know your lack of consent?

24 What are we talking about here?

25 Q. I was just asking you about one sentence that's 12:27:53

1 quoted in your Complaint, and I think you answered the  
2 question.

3 Mr. Castillo, I know what your allegation is. I  
4 get it. I totally get it. You don't need to remind me  
5 of it in response to every question. This is going to go 12:28:06  
6 a lot quicker for you if you just answer the question  
7 posed.

8 A. I'm here all day. As long as you need me. I've  
9 blocked out my entire day.

10 Q. Good. All right. 12:28:18

11 And then in the sentence preceding the one we  
12 just talked about, it says: "You can also choose to  
13 browse the web privately using Chrome in Incognito mode."

14 Do you see that?

15 A. I see it. 12:28:29

16 Q. Okay. And do you understand the word  
17 "privately" in that sentence to mean that your activity  
18 will be completely private from everybody?

19 MR. MCGEE: Object to the form.

20 You can answer. 12:28:44

21 THE WITNESS: Private to me means private. It  
22 means I don't consent.

23 Q. BY MR. BROOME: Well, where is the word  
24 "consent" in that sentence?

25 A. What I'm referring to is, is the fact that when 12:28:57



1 I'm in the Incognito mode, I'm physically telling --  
2 overtly telling Google that I am not consenting to their  
3 interception of my communications. I'm not just  
4 passively saying that, "Hey, I don't consent," I'm  
5 overtly saying, "I don't consent," which is egregious, in 12:29:17  
6 the sense that if -- at least the way I view the law, is  
7 that if you -- if you without my consent, you intercept  
8 my communications, you've violated the law. But if me as  
9 the end user consumer tells you I don't consent and you  
10 still do it, that's even more egregious. So that's what 12:29:38  
11 that means to me.

12 Q. Well, okay. I understand that. We're trying to  
13 figure out whether Google violated the law and whether  
14 you provided consent, and I know your view is that you  
15 did not. I understand that. 12:29:50

16 A. Well, I mean, I think the debate is, is did I  
17 provide consent -- did I provide consent when I didn't --  
18 when I passively was not in Incognito mode. That's the  
19 debate.

20 When I'm in Incognito mode, there is no debate 12:30:03  
21 because I just told you or told your company you're  
22 representing I don't consent.

23 Q. All right. So let me ask the question again,  
24 Mr. Castillo.

25 In the sentence: "You can also choose to browse 12:30:14

1 the web privately using Chrome in Incognito mode," does  
2 the word "privately" mean privacy from everyone or just  
3 from Google?

4 MR. MCGEE: Object to the form. Asked and  
5 answered.

12:30:29

6 THE WITNESS: In answer to your question, I  
7 think I've already answered the question.

8 Q. BY MR. BROOME: You most certainly have not.

9 Does the word "privately" mean privacy from

10 Google or from everyone? Let me ask it this way: Does

12:30:44

11 the word "privately" mean absolutely private, meaning no

12 one other than Mr. Castillo can see this activity?

13 MR. MCGEE: Same objection.

14 THE WITNESS: Well, I'll answer in that I think

15 the -- my answer is reflected from that sentence. You

12:31:02

16 can also choose to browse the web privately using Chrome

17 in Incognito mode.

18 You're asking about the word "privately," but to

19 really answer your question, one has to look at the word

20 before privately, and that says "web privately."

12:31:19

21 Q. BY MR. BROOME: Yeah.

22 A. "To browse the web privately." The word

23 "privately" is an English word that has to do with

24 privacy. And so to browse the web privately means to

25 browse the web privately. And there's no further need to

12:31:35

1 explain what private means because private is private.

2 Q. Private is private. And, it means that if  
3 you're browsing the web, nobody can see your activity.

4 Is that your understanding of that sentence?

5 MR. MCGEE: Object to the form, asked and 12:31:50  
6 answered.

7 You can still answer, Mr. Castillo.

8 THE WITNESS: I've answered that question  
9 already, and I believe privacy is privacy, and private is  
10 private. 12:32:04

11 Q. BY MR. BROOME: Okay. So when you read this  
12 sentence, your takeaway or your understanding was that  
13 when you're browsing the web, no other entities could see  
14 your activities, no other people or entities?

15 A. Well, I think I would -- I would go to, let's 12:32:23  
16 say -- I'll give you an example: I went into the  
17 internet and I went to Lowe's, and I was going to buy a  
18 shovel. Well, of course, I'm buying a shovel online, I  
19 want Lowe's to be able to see where I bought a shovel,  
20 where to deliver it to. 12:32:44

21 But what is private and what is interpreted as  
22 private by me is this is Google's Privacy Policy. Google  
23 won't collect it. Google won't know that I bought the  
24 shovel, and Google won't share that or monetize it. That  
25 is privacy to me in terms of the Google Privacy Policy as 12:32:57

1 Q. Got it. And are you aware that Chrome browser  
2 like in the non-private -- well, the Chrome browser has a  
3 history tab. Are you familiar with that, that tab?

4 A. Is the question am I familiar with the history  
5 tab while using Chrome browser? 13:34:07

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And that history tab, if you -- if you  
9 tap on it with your cursor, it drops down a list of  
10 websites that you visited; right? 13:34:19

11 A. I think that's correct.

12 Q. Okay. Does the section that you read about  
13 basic mode convey to you that Google will not select  
14 information when you visit third-party sites in basic  
15 mode? 13:35:00

16 MR. MCGEE: Object to the form.

17 THE WITNESS: Okay. Is your question asking --  
18 I don't understand your question. Can you ask the  
19 question again?

20 Q. BY MR. BROOME: Yeah. Well, I mean, in a 13:35:09  
21 nutshell, your -- your allegation is that Google  
22 represented that Incognito mode would block transmissions  
23 of data to Google when you're on non-Google websites;  
24 right?

25 A. That's an oversimplification of our allegations. 13:35:26

1 Q. I understand that. It's totally an  
2 oversimplification. I understand that.

3 A. In fact, it's rather inaccurate in the fact that  
4 the allegation is, is that we didn't consent to it  
5 passively, and we see that it's egregious when we 13:35:43  
6 specifically said don't record, don't intercept by using  
7 Incognito mode. And that's an over -- over us telling  
8 Google that we're not consenting.

9 Q. Right. And is that same message conveyed to  
10 Google when you just use basic mode? 13:36:09

11 A. No. When we're using Incognito mode, we're  
12 saying we're not consenting. I -- and even in your  
13 Privacy Policy, you say: "You put us in control." You  
14 say we can manage our privacy in a number of ways, and we  
15 can use -- we can browse the web privately using 13:36:31  
16 Incognito mode across our services. You didn't say  
17 across Chrome; you said across our services.

18 Q. Read -- read the whole sentence.

19 A. "You can also choose to browse the web privately  
20 using Chrome in Incognito mode and across our services. 13:36:50  
21 You can adjust your privacy settings to control what we  
22 collect and how information is used."

23 You specifically identify Incognito mode as the  
24 tool to do that.

25 Q. Okay. So in the second sentence -- in the last 13:37:07

1 sentence that you just read, is it your testimony that

2 Google identifies Incognito mode as the tool to -- let me

3 get the language.

4 MR. MCGEE: Object to the -- well, I guess I'll

5 wait. Sorry.

6 THE REPORTER: Excuse me, Counsel. "As the tool

7 to" what, Counsel?

8 (Interruption in proceedings.)

9 Q. BY MR. BROOME: Let me withdraw and try again.

10 You read the sentence: "And across our 13:37:36

11 services, you can adjust your privacy settings, control

12 what we collect, and how information is used."

13 And is your testimony that Google represented

14 that Incognito mode is the tool used to accomplish that?

15 MR. MCGEE: Object to the form. 13:37:52

16 You can answer.

17 THE WITNESS: My allegation is, is that when I

18 was using Incognito mode, you said I was in control of my

19 information and that you would not collect on it, per

20 your Google Privacy Policy, but you did collect on it. 13:38:05

21 Q. BY MR. BROOME: Well, aren't you combining --

22 A. You did collect -- Google collected on it.

23 Q. Aren't you combining words from the last

24 sentence and the second-to-last sentence?

25 A. I -- I merely can go by what the Google Privacy 13:38:20

1 Policy says. It says it put us in control, it allows us  
2 to use Incognito mode to browse the web privately, and  
3 it's across our services, I can adjust my privacy  
4 settings to control what Google collects and how  
5 information is used.

13:38:40

6 Those aren't my words; those are Google's words.

7 Q. Let's go down to -- are you still on page 9?

8 A. I'm on page 9, wherever you'd like me to be.

9 Q. Yeah, okay. And that's the description of

10 Incognito mode and guest mode; right?

13:39:29

11 A. I'm -- there's a paragraph here on page 9 that  
12 is titled "Incognito Mode and Guest Mode."

13 Q. And --

14 MR. MCGEE: The same objection I had with

15 previous exhibits on whether the hyperlink links to what

13:39:45

16 it was at the time of the document or if that's changed

17 or if it's even a live link.

18 Q. BY MR. BROOME: Can you -- are there any

19 statements in here about Incognito mode that you think

20 Google has acted inconsistently with?

13:40:11

21 MR. MCGEE: Mr. Castillo, I would just ask that

22 if reviewing the entire document -- it's a voluminous

23 document -- if that would help you in your answer here

24 today, please do so.

25 THE WITNESS: Yeah. I think I'd like to review

13:40:27

Page 130

1 But that sounds like a legalese question. Can you please  
2 rephrase it or please ask it again so I can try to  
3 understand what you're saying.

4 Q. BY MR. BROOME: Do you agree that if Incognito  
5 mode conceals your activity, your browsing activity from 14:33:05  
6 other people who might use your device, that provides  
7 some degree of privacy for you?

8 MR. MCGEE: Same objections.

9 THE WITNESS: Well, after I -- to answer your  
10 question, after I reviewed the Terms of Service and the 14:33:27  
11 Google Privacy Policy, I believe that using Incognito  
12 mode, as identified in the Privacy Policy, gives me --  
13 should give me some form of privacy when browsing the  
14 internet. The allegations are that it doesn't.

15 Q. BY MR. BROOME: I know what your allegations 14:33:45  
16 are.

17 Let's look at the splash screen; right? It  
18 says: "Now you can browse privately and other people who  
19 use this device won't see your activity."

20 If indeed Incognito mode conceals your Incognito 14:33:56  
21 browsing activity from other people who use your device,  
22 do you agree that that would provide some degree of  
23 privacy for you?

24 MR. MCGEE: Same objections.

25 THE WITNESS: I'm not an attorney. I'm not a 14:34:11



1 computer engineer, but from the splash screen, it is  
2 reasonable for me to -- me to infer that when I'm viewing  
3 privately, that Google and Chrome and all your engineers  
4 will not be collecting, gathering, intercepting, my  
5 communications with third-party websites. That is what I 14:34:34  
6 infer from this screen.

7 Q. BY MR. BROOME: Okay. I understand that's what  
8 you infer from this screen. That's not my question,  
9 though.

10 Do you agree that if Incognito mode concealed 14:34:48  
11 your Incognito browsing activity from other people who  
12 use your device, that would provide you some degree of  
13 privacy?

14 MR. MCGEE: Same objections as the last three or  
15 four questions. 14:35:06

16 THE WITNESS: Okay. So the whole purpose of  
17 this lawsuit is not about -- I'm -- it's not accusing  
18 people that may use my device. It's accusing Google of  
19 gathering that information.

20 So you're asking me a question that's totally 14:35:19  
21 irrelevant to the case-in-chief, but I'll happy to answer  
22 it.

23 Do I think it gives me some privacy, some  
24 moniker of privacy? Yes.

25 Q. BY MR. BROOME: Thank you. Okay. 14:35:30

1 want me to click on it?

2 Q. Actually, I just want you to go back to -- go to

3 Exhibit 9.

4 A. Okay. I'll --

5 MR. MCGEE: Same objections I've had for 15:03:46

6 previous documents that are not Bates labeled.

7 THE WITNESS: Okay. I'm on Exhibit 9. It's

8 titled "How Private Browsing Works in Chrome."

9 MR. MCGEE: Mr. Castillo, to the extent you want

10 to review the document. I think it's two pages, so... 15:04:09

11 THE WITNESS: Okay. I'd like to review it.

12 MR. BROOME: Yeah.

13 THE WITNESS: Okay. I've reviewed the document.

14 Q. BY MR. BROOME: All right. Okay.

15 So this is another help center article, and it 15:07:34

16 says: "How private browsing works in Chrome."

17 Have you -- are you familiar with this document?

18 A. You know, I'm not -- I'm not -- I don't recall.

19 I've seen a lot of this stuff, but I've seen it in

20 different documents, and this particular document, I'm 15:07:55

21 not sure if I've reviewed it or not.

22 Q. Okay. You can't recall whether you reviewed it

23 this --

24 A. I can't recall.

25 Q. -- before the lawsuit was filed? 15:08:05

1 A. I can't recall.

2 Q. All right. And then it says, under the heading

3 "How Private Browsing Works in Chrome," it says, "When

4 you browse privately, other people who use the device

5 won't see your history." 15:08:22

6 Do you see that?

7 A. "When you browse privately, other people who use

8 the device won't see your history." It's similar to the

9 splash screen under Incognito. It's not the same

10 statement, but it's similar. 15:08:36

11 Q. Okay. And what does that convey to you?

12 A. That conveys to me when you browse privately,

13 other people who use the device won't see your history.

14 That's what it conveys to me.

15 Q. Okay. And what -- okay. 15:08:50

16 You read the Google Privacy Policy before you

17 got involved in this lawsuit; right?

18 A. I'm familiar with it, and I've reviewed it, yes.

19 Q. Right. And in there, Google makes pretty clear

20 that it provides advertising services to websites; right? 15:09:13

21 MR. MCGEE: Object to the form.

22 You can answer.

23 THE WITNESS: Yes, but they make that clear when

24 you're not in Incognito mode.

25 Q. BY MR. BROOME: Let's not -- one step at a time. 15:09:27

1 Google Privacy Policy makes clear to you that Google  
2 provides advertising services to non-Google websites;  
3 correct?

4 MR. MCGEE: Object to the form and object to the  
5 questioner limiting the witness' answer. 15:09:43

6 Mr. Castillo, you can answer the question as you  
7 deem appropriate. And asked and answered.

8 THE WITNESS: I've answered that question.

9 Q. BY MR. BROOME: Okay. Well, let's put it this  
10 way: If you're not in Incognito mode, you're aware that 15:10:18  
11 Google provides advertising services to websites; right?

12 A. Yes.

13 Q. And you were aware of that fact during the class  
14 period; correct?

15 MR. MCGEE: Object to the form. 15:10:35

16 You can answer.

17 THE WITNESS: Yes.

18 Q. BY MR. BROOME: All right. Now on this page, it  
19 describes what happens when you browse privately, and  
20 then there's a heading that says: "Some information will 15:10:53  
21 not be seen or saved." And then it says: "Your activity  
22 might still be visible."

23 Do you see that heading?

24 A. Yes, I see it. It's on -- it's on this exhibit.

25 Q. Yeah. And it says: "Incognito mode stops 15:11:12

1 Chrome from saving your browsing activity to your local  
2 history."

3 Do you see that?

4 A. Yeah, I see that.

5 Q. Okay. And you understand that to mean -- we 15:11:22

6 talked about this before, right -- the local -- the

7 local -- the use of the word "local" conveyed some

8 additional clarity to you, I think you said.

9 A. Well, previously you didn't use the term "local

10 history." You used a different term of local. You said 15:11:39

11 local browser, local device. This now says local

12 history.

13 Q. Okay. What does this -- what does this sentence

14 mean to you? How do you interpret it?

15 MR. MCGEE: Objection. Calls for speculation. 15:11:56

16 THE WITNESS: Yeah. I'm not an attorney, but

17 Incognito mode stops Chrome from saving your browsing

18 activity to your local history.

19 Q. BY MR. BROOME: Right. And what do you

20 understand "local history" to mean? 15:12:06

21 A. "Local history" means my device.

22 Q. Okay.

23 A. And my history tab and my history folder and my

24 local -- on my local device. That's what I take it to

25 mean. 15:12:22

1 Q. Okay. Great.

2 And then it says: "Your activity, like your  
3 location, might still be visible to." Do you see that?

4 And then it lists five bullets.

5 A. Okay. So your Incognito mode stops Chrome from 15:12:36  
6 saving your browsing activity to your local history.  
7 Your activity, like your location, might be still be  
8 visible to, and there's five bullet points. One, two,  
9 three, four, five. Yes, there's five there.

10 Q. All right. The first bullet is: "Websites you 15:12:54  
11 visit, including the ads and resources used on those  
12 sites."

13 Do you see that?

14 A. Yes, and that makes sense. Websites you're  
15 visiting can see that I'm visiting the website. I see 15:13:06  
16 that.

17 Q. What about the ads and resources used on those  
18 sites? How do you interpret that?

19 A. I would interpret that that, including the ads  
20 and resources used on those sites, to mean the inner 15:13:18  
21 workings of those websites and how they function.

22 Q. Right. Okay.

23 So are you familiar -- are you generally  
24 familiar with the concept that websites may contract with  
25 third parties to display ads on their sites? 15:13:35

1 MR. MCGEE: Object to the form, speculation,  
2 foundation.

3 Q. BY MR. BROOME: I'm just asking you if you are  
4 familiar with that concept.

5 A. I'm vaguely familiar with it. I think websites 15:13:50  
6 have all kinds of things they do when you visit their  
7 sites.

8 Q. BY MR. BROOME: And this bullet here makes clear  
9 to you that Incognito mode -- in Incognito mode, your  
10 activity might still be visible not just to the websites 15:14:05  
11 you visit, but also to the ads and resources used on the  
12 sites; right?

13 MR. MCGEE: Object to the form, asked and  
14 answered.

15 THE WITNESS: I've answered that question 15:14:17  
16 already.

17 Q. BY MR. BROOME: Well, I don't think I got an  
18 answer. So why don't you humor me and answer it again.

19 A. Okay. So websites -- the question is -- ask the  
20 question again so I can understand exactly what you're 15:14:30  
21 saying because it seems a little tricky here.

22 Q. This bullet makes clear to you that Incognito --  
23 in Incognito mode, your activity might still be visible  
24 not just to the websites you visit, but also to the ads  
25 and resources used on those sites; correct? 15:14:45

1 MR. MCGEE: Same objections.

2 THE WITNESS: Yes. Yes, I can see that. That's  
3 what this says, yes.

4 Q. BY MR. BROOME: And then below -- below that --  
5 well -- then it says -- there's a few other bullets, and 15:15:16  
6 then there's a bullet that says "search engines."

7 Do you see that?

8 A. Yes, I see it. It's the fifth bullet.

9 Q. Right. And that's also under the heading "Your  
10 activity might still be visible." Right? 15:15:37

11 A. Yes.

12 Q. And it says: "Search engines may show search  
13 suggestions based on your location or activity in your  
14 current Incognito browsing session."

15 Do you see that? 15:15:49

16 A. Yes, I see it.

17 Q. And that makes clear to you that in Incognito  
18 mode, whatever search engine you're using may show you  
19 search suggestions based on the activity from that  
20 current Incognito session; right? 15:16:16

21 MR. MCGEE: Object to the form.

22 You can answer.

23 THE WITNESS: Yeah. Your question was it makes  
24 it clear to me.

25 Q. BY MR. BROOME: Yeah. 15:16:22



1 A. That is the crux of that question. But you had  
2 a lot of other information after you said that. Nothing  
3 is clear to me about the way Google uses Incognito mode  
4 is my answer.

5 Q. Is this sentence clear to you? 15:16:36

6 MR. MCGEE: Same objections. Asked and  
7 answered.

8 THE WITNESS: I've answered that question.

9 Q. BY MR. BROOME: Is this sentence clear to you?

10 MR. MCGEE: Same objections. 15:16:47

11 Q. BY MR. BROOME: You can answer.

12 A. I've answered that question.

13 Q. I didn't get -- I don't see anywhere in your  
14 testimony where you said that this sentence is clear or  
15 unclear. You said that nothing was clear to you about 15:17:08  
16 what Google says about Incognito mode.

17 So is it -- is it your testimony that everything  
18 Google says about Incognito mode is unclear to you?

19 MR. MCGEE: Object to the form, asked and  
20 answered, mischaracterizes prior testimony. 15:17:26

21 Mr. Castillo, you can answer.

22 THE WITNESS: Okay. I'm not going to speculate  
23 here, but I can say that the statement reads: "Search  
24 engines may show search suggestions based on your  
25 local" -- "location or activity in your current Incognito 15:17:44

1 browsing session."

2 You're asking me about one sentence. Is it

3 clear to me? No, it's not clear to me.

4 Q. BY MR. BROOME: Okay. What's unclear about it?

5 A. "Search engines may show search suggestions 15:17:55

6 based on your location or activity in your current

7 Incognito browsing session." What's unclear is: What do

8 you refer to search engines? Are you talking about

9 Google Chrome? Are you talking about another search

10 engine? Are you talking about another search engine and 15:18:14

11 Google Chrome? What is this statement referring to

12 specifically? It's vague and it's unclear to me.

13 Q. Is Google Chrome a search engine, as you

14 understand it?

15 A. Yes. 15:18:26

16 MR. MCGEE: Object to the form.

17 Q. BY MR. BROOME: Have you ever used Google.com to

18 conduct searches?

19 A. I don't understand that question.

20 Q. Well, yeah. Maybe I don't understand your 15:18:44

21 answers.

22 You said Google Chrome is a search engine.

23 That's your testimony.

24 A. Is it not a search engine? Yeah, that's -- it's

25 a search engine. Google Chrome is a browser. It has a 15:18:57

1 search engine. It's Google Chrome.

2 Q. And have you ever gone to Google domain and  
3 typed in a search?

4 A. Yes, I've been on Google Chrome and I have typed  
5 in the letters www.Google.com. Sometimes I do it to get 15:19:21  
6 back to the home screen.

7 Q. And have you ever used Google.com, the home  
8 screen, to conduct searches?

9 A. When I've typed in www.Google.com, it's been  
10 within Chrome. So I've been on Chrome. So it was Chrome 15:19:40  
11 doing the search.

12 Q. Do you understand there to be a difference  
13 between a search engine and a browser or are they one and  
14 the same thing, in your mind?

15 MR. MCGEE: Object to the form. 15:19:52

16 THE WITNESS: I -- I'm not an engineer, and they  
17 seem the same to me. Maybe they're not, but they seem  
18 the same to me.

19 Q. BY MR. BROOME: I don't think you need to be an  
20 engineer. I mean, have you ever heard of Bing? 15:20:02

21 A. Of what?

22 Q. Bing.

23 A. Bing? Is that the Microsoft search engine,  
24 Microsoft browser?

25 Q. It's not a browser. 15:20:13

1 A. I've heard of it. I've heard of it.

2 Q. Yeah. Bing is a search engine, and there's

3 other browsers out there. But it sounds to me like you

4 don't -- you don't perceive the difference between a

5 search engine and a browser and that's okay. 15:20:26

6 MR. MCGEE: So we've been going about an hour.

7 If there's a break we can take pretty soon, I'd

8 appreciate it.

9 MR. BROOME: Yeah, let me see if I've got any

10 more questions about this one. Yeah. Just give me like 15:20:40

11 two or three more minutes, hopefully.

12 Q. In the next paragraph, there's a header that

13 says: "Some of your info might still be visible."

14 Do you see that?

15 A. Let's -- I have to scroll down here. It's not 15:20:55

16 visible.

17 "Some of your info might still be visible."

18 Okay, I'm there.

19 Q. All right. And it says: "Some of your info

20 might still be visible." And then it says: "A web 15:21:12

21 service, website, search engine, or provider may be able

22 to see."

23 Do you see that?

24 A. Yes, I see it.

25 Q. Okay. And that differentiates between websites 15:21:30

1 and web services; correct?

2 A. Websites, search engine, or provider may be able

3 to see. Say that again. This differentiates for what?

4 Q. Between web services and websites.

5 A. Yeah, I see what it says. Yes.

15:21:49

6 Q. And it also lists as a separate category of

7 entity that might see your information a search engine;

8 correct?

9 A. Yes, I see what it says on this document.

10 MR. BROOME: All right. We can take a break.

15:22:08

11 MR. MCGEE: Thank you.

12 THE VIDEOGRAPHER: We are off the record. The  
13 time is 3:22 p.m.

14 (Recess.)

15 THE VIDEOGRAPHER: We are back on the record.

15:35:52

16 The time is 3:36 p.m.

17 Q. BY MR. BROOME: Mr. Castillo, do you understand  
18 that if you log into your Gmail account, that also logs  
19 you into your Google Account?

20 A. Yes.

15:36:17

21 (Exhibit 11, Firefox, was marked for

22 identification by counsel electronically.)

23 (Exhibit 12, In Private Browsing, was marked for

24 identification by counsel electronically.)

25 (Exhibit 13, Private Browsing Enabled, was

1 here. Okay, I found it. I have it. This is the one  
2 that is Interrogatory Number 13; is that correct?

3 Q. Yep. We're just looking at that paragraph  
4 again.

5 A. Okay. Okay. Go ahead. 16:50:16

6 Q. All right. And I asked you about the sentence  
7 that says: "Plaintiff has, however, provided valuable  
8 information in the form of his personal information for  
9 the use of Google products." Right?

10 A. Yes. 16:50:27

11 Q. You remember that?

12 And then it goes on and says: "But Google  
13 unlawfully intercepted, collected data from, analyzed,  
14 and monetized plaintiff's browsing activity conducted in  
15 private browsing mode, the value of which has been 16:50:39  
16 diminished, and Google has used to its benefit to  
17 increase its profits and revenues from targeted  
18 advertising and improvements of Google's other products."

19 What do you mean by "diminished"?

20 MR. MCGEE: Object to the form to the extent it 16:50:54  
21 calls for expert opinion.

22 THE WITNESS: Okay, which -- which line of the  
23 paragraph are you referring to?

24 Q. BY MR. BROOME: It looks like it's sitting in  
25 between lines 19 and 20. 16:51:08

1 A. Okay. Okay. Ask your question again. I've  
2 reviewed that statement.

3 Q. What do you mean by the words "the value of  
4 which has been diminished"?

5 MR. MCGEE: Same objection. 16:51:39

6 THE WITNESS: So when Google monetizes my  
7 private browsing, which is browsing that's important to  
8 me, I have never used, but I'm familiar with other  
9 websites that I could sell that information to, but the  
10 cat's out of the bag already, and Google has already 16:52:01  
11 taken that information into my -- to my belief, has  
12 monetized it already and has used it to sell ads and  
13 generate revenue.

14 Q. BY MR. BROOME: Have you ever considered selling  
15 your data? 16:52:20

16 MR. MCGEE: Objection. Asked and answered.

17 THE WITNESS: No.

18 Q. BY MR. BROOME: And why -- if Google uses your  
19 data for advertising, why does that make your data less  
20 valuable? 16:52:37

21 MR. MCGEE: Object to the form, calls for  
22 speculation, expert opinion.

23 THE WITNESS: Yeah, I'm not an expert on this.

24 But I do know that Google monetizes all my data. But  
25 when I'm in Incognito mode, I'm specifically and overtly 16:52:52

1 saying do not collect this data.

2 And Google uses -- tells me through the Google

3 Privacy Policy, the Incognito splash screen, that they

4 won't collect that data and they won't use it.

5 Q. BY MR. BROOME: But how does it make your -- if 16:53:10

6 they do use it, how does that make your data less

7 valuable?

8 MR. MCGEE: Same objections.

9 THE WITNESS: Yeah, there's -- there's all kinds

10 of ways, and I'm not an expert on that, but I do suspect 16:53:21

11 that that is the case.

12 Q. BY MR. BROOME: Can you tell me one way?

13 A. Yeah. If you -- if you -- if they sell

14 information on an ad, that particular ad can be used to

15 generate revenue, and that revenue is going to the 16:53:38

16 profits of Google, and it's my information that I didn't

17 consent for it to be taken or utilized in that fashion.

18 Therefore, it diminishes its value.

19 Q. I mean, you could still -- you could take your

20 data still and sell it to somebody else if you wanted to; 16:53:57

21 right?

22 A. Yeah, but how valuable is that if it's already

23 been released to someone else already? And every little

24 release diminishes it further. At least, that's my

25 opinion. 16:54:13



1 Q. Okay. Are you familiar with the Brave browser?

2 A. What browser?

3 Q. Brave.

4 A. No.

5 MR. BROOME: Tracy, why don't we load tab 17, 16:54:37

6 unless we've already done this one.

7 Maybe we already did this one. Hold on a

8 second. I think it's -- no. Tracy, let's load 17.

9 (Exhibit 16, Plaintiff Christopher Castillo's

10 Objections and Responses to Defendant's First 16:55:07

11 Set of Interrogatories, was marked for

12 identification by counsel electronically.)

13 Q. BY MR. BROOME: All right. Take a look at

14 Exhibit 17 (sic).

15 A. Okay. 16:55:54

16 Q. Oh, actually, this may be the wrong document.

17 Hold on.

18 A. One second. 17. All right. Plaintiff

19 Castillo's Objections and Responses to Defendant's First

20 set of Interrogatories." 16:56:20

21 All right. I see this document. I'm familiar

22 with it.

23 MR. MCGEE: Can I just -- sorry. I don't want

24 to interrupt the flow here, but it's marked as Exhibit 15

25 in the ShareFile, but I think it's Exhibit 16 is the 16:56:31

1 sticker on it.

2 THE WITNESS: Did I choose the wrong one?

3 MR. MCGEE: No, I'm just asking for

4 clarification from Mr. Broome whether there was an

5 Exhibit 16 that I'm missing here that may have been 16:56:45

6 marked.

7 MR. BROOME: Hold on one second. I might

8 actually have the wrong document here.

9 Well, why don't we just do this.

10 MR. MCGEE: It looks like we may have just 16:57:18

11 skipped Exhibit 15 in -- in the naming, which is fine.

12 I'm just making sure, so...

13 Q. BY MR. BROOME: You're not familiar with a

14 company called Brave; is that your testimony?

15 A. Are you asking me a question? 16:57:31

16 Q. Are you familiar with a company called Brave?

17 A. No, I'm not familiar, and you asked that

18 already.

19 Q. Are you familiar with a company called Killi?

20 A. Can you spell that? 16:57:42

21 Q. K-I-L-L-I.

22 A. No, I'm not familiar with that.

23 Q. Are you familiar with any companies that provide

24 you -- provide people or users compensation for the kinds

25 of data that are at issue in this case? 16:58:03

1 A. Yeah. There's companies that I participate in  
2 that ask me my opinion, and I give it to them, and they  
3 pay me for that.

4 Q. All right. So I asked you about whether -- I  
5 asked you whether you're familiar with companies that 16:58:17  
6 compensate you for the types of data that are at issue in  
7 this case.

8 A. Yeah. At the time, at this moment, I don't  
9 recall their names. I'm familiar with. I've heard of  
10 them, but I just don't know them specifically. 16:58:31

11 Q. Well, you just said there's companies that I  
12 participate in that ask me for my opinion and I give it  
13 to them and I pay them for that.

14 A. Yeah, I'm familiar with those companies, and I  
15 know the names of those, but I don't know the names of 16:58:45  
16 companies that I sell my information to -- to get -- to  
17 get like that you're referring to, Brave or Killi, or  
18 where I give them my information and they give me money.

19 I know that they exist. I just don't recall at  
20 the moment their names. It's been a long day, and I'd 16:59:02  
21 have to sit down and think about it and -- before I  
22 respond to that from an answer coming from something that  
23 I know as a fact. I'd just be speculating at this point.

24 Q. If you were to learn that Incognito mode  
25 actually does prevent your browsing activity from being 16:59:23

1 that starts with the word "learn" for me.

2 A. Okay. This is Exhibit Number 7, the first  
3 paragraph.

4 "Google Chrome Privacy Policy. Learn how to  
5 control the information that is collected, stored, and 17:25:27  
6 shared when you used Google Chrome browser on your  
7 computer or mobile device, Chrome OS, and when you enable  
8 safe browsing in Chrome. Although this policy describes  
9 features that are specific to Chrome, any personal  
10 information that is provided to Google or stored in your 17:25:46  
11 Google Account will be used and protected in accordance  
12 with the Google Privacy Policy, as changed from time to  
13 time. Google's retention policy describes how and why  
14 Google retains data."

15 Q. Okay. And when you read those sentences, what 17:26:02  
16 does that convey to you about Incognito mode?

17 A. It conveys to me that when I'm in Incognito  
18 mode, Google won't -- Google won't record, intercept,  
19 collect, and save my browsing history, my cookies and  
20 site data, and information entered into forms. 17:26:29

21 Q. Okay. And if I could move you to Exhibit  
22 Number 8.

23 A. Okay.

24 Q. And let me know when you've got that.

25 A. Hang on one second. 17:26:40

1 Okay, I'm there.

2 Q. Okay. If you would review the first sentence.

3 A. Okay. The first sentence says: "Now you can

4 browse privately, comma, and other people who use this

5 device won't see your activity -- 17:27:11

6 Q. Mr. Castillo, is there one sentence -- or excuse

7 me, is there one promise or two promises in that first

8 sentence?

9 A. When I read it, I see two promises. The first

10 is "now you can browse privately," comma, and the second 17:27:23

11 is, "and other people who use this device won't see your

12 activity."

13 Q. And what's your understanding of what the first  
14 promise means?

15 A. The first promise is that I can browse 17:27:37

16 privately, meaning Google will not see my browsing

17 history, will not collect my browsing history, will not

18 sell my browsing history, will not record my browsing

19 history.

20 Google will not -- won't save cookies, they 17:27:56

21 won't save site data, they won't collect that

22 information. They won't sell that information. Google

23 will not see my information entered into forms. They

24 won't collect that data, and they won't sell that data.

25 That's what it means to me. 17:28:12

1 by the Google Privacy Policy.

2 Q. All right. And again, if Google Search is a  
3 Google service, does using that Google service in  
4 Incognito mode mean that Google can collect a user's  
5 data? 17:29:31

6 A. Not according to the Privacy Policy, which says  
7 I'm in control, and it says I can use Incognito mode, not  
8 according to the splash screen, that says Chrome won't  
9 save the following information: Your browsing history  
10 cookies and site data, information in forms. And the 17:29:48  
11 fact -- I mean, over-arching is the Google Privacy  
12 Policy.

13 Q. If I could draw your attention to Exhibit  
14 Number 9.

15 A. Okay. I recall going over this. 17:30:03

16 Q. Okay. Do you know how to access this document?

17 A. No.

18 Q. All right. And do you think the reference to  
19 resources and ads includes Google services?

20 MR. BROOME: Object to the form. 17:30:27

21 THE WITNESS: Say that question again.

22 Q. BY MR. MCGEE: Sure.

23 Do you see at the bottom there's a reference to  
24 resources and ads?

25 A. Right. 17:30:43

1 Q. Do you see that?

2 A. Yes.

3 Q. Do you think that includes Google services?

4 MR. BROOME: Object to the form.

5 THE WITNESS: Well, yes, that includes Google 17:30:57

6 services.

7 Q. BY MR. MCGEE: Okay. And do you see in the  
8 section below, its titled "Some of Your Info Might Still  
9 Be Visible," referring to search engines?

10 A. Wait. Go back to that question. Go back to 17:31:10  
11 that question again.

12 Q. Sure, Mr. Castillo. What would you like to  
13 revisit about that question?

14 A. Ask that question again. Because I -- I want  
15 you -- I want to understand looking in the context of 17:31:19  
16 this statement here that you just made. Ask that  
17 question again.

18 Q. Right, sure.

19 So it says: "Your activity might still be  
20 visible." 17:31:28

21 Do you see that headline?

22 A. Yes.

23 Q. And it says: "Incognito mode stops Chrome from  
24 saving your browsing activity to your local history,  
25 period. Your activity like your location might still be 17:31:37

1 visible to websites you visit, including the ads and  
2 resources used on those sites."

3 A. Okay. Now what was your question again?

4 Q. My question is: Is Google mentioned as one of  
5 the ads and resources used on the -- 17:31:55

6 A. Oh, yeah. I misunderstood the question. No,  
7 Google's not mentioned as that.

8 Q. Okay. But they could have been; correct?

9 MR. BROOME: Object to the form.

10 THE WITNESS: I guess they could have been, but 17:32:08  
11 it says -- it doesn't say Google here. It says  
12 "including the ads and resources used on those sites."  
13 It doesn't mention Google here.

14 Q. BY MR. MCGEE: And if you go down to the section  
15 below, titled "Some of Your Info Might Still Be Visible." 17:32:22

16 Do you see that?

17 A. Yes, I see it.

18 Q. And it speaks about search engines. Do you see  
19 that?

20 A. Yes, I see it. 17:32:35

21 Q. Is Google mentioned there?

22 A. Google's not mentioned here.

23 Q. So based on your understanding of the Privacy  
24 Policy in the splash screen, could possible -- or could  
25 Google have been included or could Google Search have 17:32:51



1       been included here where you're -- we're talking about  
2       the resources?

3           A. No, no. Because the Privacy Policy says that  
4       when you're in Incognito mode, they won't -- they won't  
5       collect that kind of data. 17:33:08

6           Q. Mr. Castillo, taking the Terms of Service,  
7       Privacy Policy, the splash screen, the Chrome Privacy  
8       Notice, and all of the other Google disclosures that  
9       you've been shown here today, again taking them all  
10      together, what did Google promise to its users regarding 17:33:28  
11     Incognito mode?

12           MR. BROOME: Object to the form.

13           THE WITNESS: So Google promised that I was in  
14      control and that I could use Incognito mode to help  
15      manage my privacy, and I could browse the web privately 17:33:46  
16      using Incognito mode and that they wouldn't collect, they  
17      wouldn't store, they wouldn't sell, they wouldn't use  
18      that data in any way when I was browsing in Incognito  
19      mode.

20           And that's per their overall over-arching Google 17:34:11  
21      Privacy Policy, which is contained in the Terms of  
22      Service and is reiterated on the "you've gone Incognito"  
23      splash screen.

24           Q. Thank, you Mr. Castillo.

25           And I know it's a sore subject, but I'd like to 17:34:26

1 A. I've answered the question already, in my  
2 opinion.

3 Q. Earlier Mr. -- Mr. McGee just asked you about  
4 the David Yurman incident, and when we were -- I was  
5 asking you some questions about how do you know it's 17:48:46  
6 Google that's responsible for the ads as opposed to some  
7 other entity. And you said you assume it's Google  
8 because Google's the conduit for the advertising,  
9 something to that extent; right?

10 Do you remember that? 17:49:05

11 A. Yeah, I recall that.

12 MR. MCGEE: Object to the extent it misstates  
13 prior testimony.

14 Q. BY MR. BROOME: Okay. And what did you mean by  
15 that? 17:49:12

16 A. I mean what I said. I believe it was Google.  
17 That's what I believe.

18 Q. Is it your view that if you see targeted ads,  
19 that Google's always responsible?

20 A. That's what I believe. 17:49:27

21 Look, I'm not an engineer. We'll let the --  
22 we'll let the experts figure that out. I believe that it  
23 was Google. That's in my presence of mind. That's what  
24 I believe.

25 And when I saw the lawsuit -- when I saw the 17:49:46

1 lawsuit happen, it became confirmed in my mind, and I  
2 connected the dots, and I said that's it. That's how --  
3 that's how it happened. Google did this. Google caused  
4 this. Google is responsible for this. And Google should  
5 cease this activity, they should remove my data, and they 17:50:11  
6 should pay for damages that they've caused.

7 And one of the damages happens to be, though  
8 they're probably not entirely responsible for it, but I'm  
9 no longer with this woman, and thank you very much for  
10 what I am alleging spoiling my engagement surprise. 17:50:26  
11 Thanks a lot, Google.

12 Q. I'm sorry, just so the record is clear, are you  
13 suggesting that Google is in some way to blame for the  
14 end of your relationship with this woman?

15 A. I'm not saying they're entirely to blame, but 17:50:47  
16 they contributed to some amount to a priceless situation.

17 Q. In what way is Google partially to blame for the  
18 demise of your relationship?

19 A. Spoiling an engagement surprise? I think that's  
20 a significant event that someone would remember and be 17:51:02  
21 based in their mind. That would be important to someone  
22 in a relationship. Taking the quintessential moment and  
23 spoiling an engagement surprise seems rather relevant and  
24 a significant event.

25 Q. Okay. I didn't really want to get into this, 17:51:26

1 but since you're suggesting that Google is to blame, and  
2 potentially this is some part of your claim, the  
3 engagement surprise was spoiled, and then how soon after  
4 that did your relationship with this woman end?

5 A. It ended in 2019, and this was one miss that 17:51:44  
6 happened amidst other misses that ultimately led to the  
7 end of the relationship.

8 Q. When did the David Yurman incident occur?

9 A. I believe it was 2017. I'm not exactly sure. I  
10 don't recall exactly the date. I'd have to go back and 17:52:08  
11 look at it.

12 Q. Okay.

13 A. Perhaps it was 2000 and -- I'm sorry, it might  
14 have been 2016. Sometime in 2016. I'd have to -- I'm  
15 tired. I'd have to go back and look at it to give you 17:52:19  
16 the exact date.

17 Q. And your fiancé was upset at you because she  
18 learned of the --

19 A. I remember her being specifically annoyed that  
20 her surprise, her wedding engagement surprise was sitting 17:52:31  
21 on my computer and in her face every time she logged on  
22 to the computer.

23 Q. Because she saw an ad for David Yurman?

24 A. She didn't just see an ad for David Yurman; she  
25 saw an ad for the specific ring that she had expressed 17:52:48

1 interest in the past for, meaning that I had looked at  
2 it.

3 Q. And your -- and your view is that she blamed you  
4 for that?

5 A. I don't see any other way to look at it, but 17:52:58  
6 yes.

7 MR. BROOME: I have no further questions subject  
8 to reexam by your counsel.

9 MR. MCGEE: No reexam. Thank you.

10 We'll read. 17:53:07

11 MR. BROOME: All right. Thanks, everybody.

12 Thanks, Mr. Castillo.

13 THE WITNESS: Thank you very much. Have a nice  
14 day.

15 MR. MCGEE: Madam Court Reporter, if we can get 17:53:18  
16 a rush -- or excuse me, a rough.

17 THE REPORTER: Yes, absolutely.

18 If we can go off the record first?

19 THE VIDEOGRAPHER: We are off the record. The  
20 time is 5:53 p.m. on February 8th, 2022. This concludes 17:53:28  
21 today's testimony given by Christopher Castillo. The  
22 total number of media units used was 11 and will be  
23 retained by Veritext Legal Solutions.

24 (Time noted: 5:53 p.m.)

25 --oOo--